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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/957,408	09/20/2001	Nicholes James Nissing	7005R	4734

27752 7590 08/15/2003

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[REDACTED] EXAMINER

COLE, ELIZABETH M

ART UNIT	PAPER NUMBER
1771	6

DATE MAILED: 08/15/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/957,408	NISSING, NICHOLAS JAMES
Examiner	Art Unit	
Elizabeth M Cole	1771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) Responsive to communication(s) filed on 02 June 2003.
- 2a) This action is FINAL.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) Claim(s) 1-15 and 17-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-15, 17-22 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
  - a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-5, 7-15, 17-19, 21-22 are rejected under 35 U.S.C. 102(b) as being anticipated

by Takeuchi et al, U.S. Patent No. 5,958,555. Takeuchi et al discloses a material comprising at least first and second creped sheets. The crinkles of the creped sheets are aligned in a first direction. The sheets are bonded by parallel rows of adhesive. The adhesive rows are oriented in a direction perpendicular to the direction of the crinkles of the creped sheets. The material exhibits regions of minimum and maximum caliper, wherein the areas of minimum caliper coincide with the bonded rows. See fig 1. The sheets may comprise either nonwoven fabrics or paper sheets. See col. 3, lines 61-65. The sheets may have different degrees of expansion. In one embodiment, identical sheets may be bonded to either side of a sheet having a different degree of expansion and therefore the outer sheets would have the same degree of expansion. See col. 2, lines 59-62. The sheets may be apertured. See 5, lines 64-67 and col. 12, lines 20-25. The bonding agent may comprise ethylene vinyl acetate. See col. 6, lines 66-67. The extensibility of the creped sheets would be perpendicular to the direction of the crinkles, and therefore, the rows of bonding would be parallel to the direction of extensibility of the sheets. Takeuchi et al teaches at col. 2, lines 1-9 that the creped sheet should preferably expand back to a size approximately equal to its size prior to the creping process which would meet the requirements of claim 19.

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are

such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Takeuchi et al, U.S. Patent No. 5,958,555. Takeuchi et al discloses a material as set forth above. Takeuchi differs from the claimed invention because it does not disclose that the ratio of wet to dry caliper is at least 1.1. However, Takeuchi et al does teach at col. 7, line 65 - col. 8, line 26, that the spacing of the adhesive rows should be controlled so that the sheet has the ability to expand appropriately. Therefore, Takeuchi teaches that the wet to dry caliper is related to the spacing of the adhesive rows. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have selected the appropriate adhesive row spacing through the process of routine experimentation in order to produce the optimum expansion of the sheet.

5. Applicant's arguments filed 6/2/03 have been fully considered but they are not persuasive. . . Applicant has amended claim 1 to recite a single play disposable fibrous article. However, this amendment does not distinguish the claimed invention from Takeuchi et al for two reasons. First, the recitation "a single ply" has not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951). Second, the claim uses open language by employing the transitional phrase "comprising". Therefore, the presence of other layers is not precluded.

With regard to claim 7, Applicant argues that the material of Takeuchi is not a disposable article as claimed in claim 7 and does not teach that each of the two plies are adhesively joined

and have surface topography exhibiting regions of minimum and maximum calipers. However, Takeuchi clearly teaches employing adhesive to bond the plies and further teaches and depicts in the drawing figures that both plies have surface topography exhibiting regions of minimum and maximum calipers. Takeuchi further clearly teaches a disposable wipe. See col. 2, lines 18-28 and the drawings.

With regard to the obviousness rejection, Applicant repeats the arguments as to the anticipation rejection. These arguments are addressed above.

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elizabeth M. Cole whose telephone number is (703) 308-0037. The examiner may be reached between 6:30 AM and 5:00 PM Monday through Thursday.

Mr. Terrel Morris, the examiner's supervisor, may be reached at (703) 308-2414.

Inquiries of a general nature may be directed to the Group Receptionist whose telephone number is (703) 308-0661.

The fax number for official faxes is (703) 872-9310. The fax number for official after final faxes is (703) 872-9311. The fax number for unofficial faxes is (703) 305-5436.

*Elizabeth M. Cole*

Elizabeth M. Cole  
Primary Examiner  
Art Unit 1771

e.m.c  
August 13, 2003